

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

CATHY WHITE, }  
vs. Plaintiff, } Case No. 2:18-cv-00504-JCM-CWH  
NANCY A. BERRYHILL, }  
ACTING COMMISSIONER OF SOCIAL }  
SECURITY ADMINISTRATION, }  
Defendant. }

Presently before the court is plaintiff's application to proceed *in forma pauperis* (ECF No. 1), filed on March 19, 2018.

### I. *In Forma Pauperis* Application

Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, plaintiff's request to proceed *in forma pauperis* will be granted.

## **II. Screening the Complaint**

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, file to state a claim on which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To

1 survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a  
2 claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court  
3 liberally construes pro se complaints and may only dismiss them “if it appears beyond doubt that the  
4 plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Nordstrom*  
5 *v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678).

6 In considering whether the complaint is sufficient to state a claim, all allegations of material fact  
7 are taken as true and construed in the light most favorable to the plaintiff. *Wyler Summit P’ship v.*  
8 *Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the standard  
9 under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than  
10 mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic  
11 recitation of the elements of a cause of action is insufficient. *Id.* Unless it is clear the complaint’s  
12 deficiencies could not be cured through amendment, a pro se plaintiff should be given leave to amend  
13 the complaint with notice regarding the complaint’s deficiencies. *Cato v. United States*, 70 F.3d 1103,  
14 1106 (9th Cir. 1995).

15 If a plaintiff’s complaint challenges a decision by the Social Security Administration (“SSA”),  
16 before filing a lawsuit, the plaintiff must exhaust administrative remedies. *See* 42 U.S.C. § 405(g); *see*  
17 also *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam) (“Section 405(g)  
18 provides that a civil action may be brought only after (1) the claimant has been party to a hearing held  
19 by the Secretary, and (2) the Secretary has made a final decision on the claim”). Generally, if the SSA  
20 denies a claimant’s application for disability benefits, the claimant may request reconsideration of the  
21 decision. If the claim is denied at the reconsideration level, a claimant may request a hearing before an  
22 administrative law judge (“ALJ”). If the ALJ denies the claim, a claimant may request review of the  
23 decision by the Appeals Council. If the Appeals Council declines to review the ALJ’s decision, a  
24 claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

25 Once a plaintiff has exhausted administrative remedies, he may obtain judicial review of a SSA  
26 decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.* An action for  
27 judicial review of a determination by the SSA must be brought “in the district court of the United States  
28 for the judicial district in which the plaintiff resides.” *Id.* The complaint should state the nature of

1 plaintiff's disability, when plaintiff claims he became disabled, and when and how he exhausted his  
2 administrative remedies. The complaint should also contain a plain, short, and concise statement  
3 identifying the nature of plaintiff's disagreement with the determination made by the Social Security  
4 Administration and show that plaintiff is entitled to relief. A district court can affirm, modify, reverse,  
5 or remand a decision if plaintiff has exhausted his administrative remedies and timely filed a civil  
6 action. However, judicial review of the Commissioner's decision to deny benefits is limited to  
7 determining: (a) whether there is substantial evidence in the record as a whole to support the findings of  
8 the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Commissioner*  
9 *of the Social Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

10 Here, plaintiff alleges that on January 26, 2018, the Appeals Council denied her request for  
11 review, and, at that time, the ALJ's decision became the final decision of the Commissioner. Thus, it  
12 appears Plaintiff has exhausted her administrative remedies. However, plaintiff does not state the  
13 nature of her disability, when she claims she became disabled, or the nature of her disagreement with  
14 the Social Security Administration's findings. The court therefore will dismiss plaintiff's complaint  
15 without prejudice for the plaintiff to file an amended complaint.

16 If plaintiff chooses to file an amended complaint, the document must be titled "Amended  
17 Complaint." The amended complaint must state the nature of plaintiff's disability, when plaintiff  
18 claims she became disabled, and when and how she exhausted her administrative remedies. The  
19 amended complaint also must contain a short and plain statement identifying the nature of plaintiff's  
20 disagreement with the determination made by the Social Security Administration and show that plaintiff  
21 is entitled to relief. Although the Federal Rules of Civil Procedure adopt a flexible pleading standard,  
22 plaintiff still must give the Commissioner of Social Security fair notice of the reasons plaintiff is  
23 seeking review of the Commissioner's decision.

24 Additionally, plaintiff is advised that if she files an amended complaint, the original complaint  
25 (ECF No. 1-1) no longer serves any function in this case. As such, the amended complaint must be  
26 complete in and of itself without reference to prior pleadings or other documents. The court cannot  
27 refer to a prior pleading or other documents to make plaintiff's amended complaint complete.  
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### III. Conclusion

IT IS THEREFORE ORDERED that plaintiff's application for leave to proceed *in forma pauperis* (ECF No. 1) is GRANTED. Plaintiff will not be required to pay the filing fee in this action. Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of a security for fees or costs. This Order granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at government expense.

IT IS FURTHER ORDERED that the clerk of court must file plaintiff's complaint (ECF No. 1-1).

IT IS FURTHER ORDERED that the complaint (ECF No. 1-1) is DISMISSED without prejudice for failure to state a claim upon which relief can be granted, with leave to amend. If plaintiff chooses to file an amended complaint, plaintiff must file the amended complaint by June 25, 2018. Failure to comply with this order may result in a recommendation that this action be dismissed.

DATED: May 24, 2018

C.W. Hoffman, Jr.  
United States Magistrate Judge